

**TESTIMONY OF
ALVIN WINDY BOY, SR.**

**CHAIRMAN, CHIPPEWA CREE TRIBE
OF THE
ROCKY BOY'S RESERVATION**

**AND FURTHER REPRESENTING THE
BLACKFEET TRIBE, THE ASSINIBOINE AND GROS VENTRE TRIBES OF THE FT. BELKNAP RESERVATION,
THE NORTHERN CHEYENNE TRIBE AND THE ASSINIBONE AND SIOUX TRIBES OF THE FT. PECK
RESERVATION**

**ON
IMPLEMENTATION AND REAUTHORIZATION OF THE PERSONAL WORK RESPONSIBILITY AND WORK
OPPORTUNITY RECONCILIATION ACT OF 1996**

**BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE**

May 10, 2002

Good Morning, Chairman Inouye, Vice Chairman Campbell and other distinguished members of the Indian Affairs Committee. My name is Alvin Windy Boy, Sr., and I am the Chairman of the Chippewa Cree Tribe of the Rocky Boy's Reservation in Montana. Thank you for this opportunity to present comments on welfare reform in Indian country.

I would like recognize all those that have come before us: those that have offered their lives so that our children could live; past tribal leaders that have fought for tribal sovereignty and preservation of the Government-to-Government trust relationship and those that never wavered in trying to assist the many Indian people who have lived in poverty for far too many years.

I would like to commend the Chairman, the Vice Chairman and the members of the Indian Affairs Committee members for conducting this hearing on the implementation and reauthorization of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, generally referred to as the Welfare Reform Act. I also want to commend our Senator, Max Baucus, for listening to the views of tribal governments and for his introducing S. 2484, the American Indian Welfare Reform Act of 2002. My testimony will offer commentary on both welfare reform in general and S. 2484. It is important for this Committee to receive the perspectives of tribal governments that have been successful in operating tribal Temporary Assistance to Needy Families (TANF) programs as well as those that are still under state TANF plans.

As the Congress deliberates on legislation to reauthorize the Welfare Reform Act, it is important that you be vigilant in keeping foremost in your minds those American Indian children, women and families that have endured and continue to survive on truly minimal means. Our tribal governments are trying to pick up the pieces and help in the day-to-day struggles of what are in reality the most impoverished people in this country – members of federally recognized Indian tribes.

You will hear today from representatives of tribes operating their own TANF programs. I am here to provide the perspective of the non-TANF tribes, those tribes that for a number of reasons cannot or have not chosen to operate Tribal TANF programs.

Issues Relative to Tribal Participation in Welfare Reform:

Although there are other related areas of discussion, we have chosen the areas of governance, program delivery and service, and data control and impact as primary. Existing methods have been tested and proven to only widen the gap between Tribal/State relations and hinder the process of American Indians and families becoming self-sufficient with meaningful and productive lives. Without the solid foundation of data, evaluation and research, long term change within the welfare system will be minimal at best.

Governance:

Welfare reform, with its mandate for decision-making at the local level, has fundamentally altered the manner by which governmental entities and affected individuals relate to one another. Montana's Indian tribes still need to see a level playing field relative to decision-making. Due to the nature of federal block grants within the federal, state and local government systems, and the fundamental effort to establish local control, the present system deters from the policy of government-to-government relationship between tribes and states, and tribes and the federal government. Consequently, the decision-making authority of tribal governments is undermined and limited. Because there is no set protocol for policy setting between the Montana DPHHS, county offices and tribal governments, the bulk of policy decision and funding discretions remain with DPHHS and county offices and we have little input.

The present design leaves the counties with funding control and discretion to determine the level of services and delivery. Although Montana has technically demonstrated compliance with the "equitable access" provision of PRWORA, they have delegated or devolved such a degree of decision-making to the county level that tribes are left without meaningful consultation as the relationship between many tribes and their counties are often not good.

In addition, the design and nature of the federal block grant system has limited consultation between tribal and state government on state TANF plans. The Montana state plan has given county offices primary control, thus creating an uneven tripartite relationship between state, tribal, and county governments.

It is the concern of the five non-Tribal TANF tribes in Montana that tribal governments should not have to be under the thumb of county governments --- consultation involving tribes should remain at the highest level of state and federal governments.

Program delivery and services:

When the state of Montana receives federal TANF funds, those funds are in turn reallocated out to each county, without prior consultation with tribal governments to establish agreements for service, or to discuss unmet needs of tribal members. Each county is required to submit a "community operating plan," which is required to represent the needs and services to all within the county borders. However, more often than not, the needs of tribal members are unrepresented, and these needs remain unaddressed.

The counties that border reservations are required to provide services to enrolled tribal members but are not required by DPHHS to attain a memorandum of agreement or understanding with the tribal government, therefore allowing delivery of services to be determined at the county's discretion. Under that operation, the

adequacy of services still remains a question, and continues to demonstrate unmet needs with high sanction rates and high Families Achieving Independence in Montana (FAIM) caseloads.

Under FAIM II-R plan, the design of the Community Operating Plan and the high caseload of American Indians, coupled with limited funding and the current political climate in Montana, leaves limited opportunity for the individual non-TANF tribes to create meaningful change. It is also apparent that unless strong action is taken by the tribes to establish working memorandums of agreement with the state and county governments, decisions that tribes choose to make will be without teeth, and conditions for tribal members in the FAIM II-R program will remain the same.

Data Control and Impact:

Within Montana there is very limited data regarding specific tribal members within the FAIM program because from its inception the state data collection system did not have the necessary design to include tribal data within the initial application for services. Tribal members had to self-identify when filling out the 18-page state application form but inevitably when our tribes were able to compare their data to the state's (a process that can only be done manually - name-by-name) we found wide discrepancies. Although, the TEAMS computer system can determine the number (in general) of tribal members at the state level, the local county offices do not have the same ability.

There are currently limited and questionable controls to establish baseline data for tribes. To illustrate this fact, when a Montana tribe recently conducted a feasibility study to determine whether it was in the best interest of the tribe to TANF, it found that when it approached the state and county offices, the necessary data had to be counted manually.

It should be noted that American Indians have maintained the highest caseload in our state, remaining constant at 47% to 53% of the entire welfare caseload statewide.

Clearly, there is a need for change for tribes that are under state TANF plans.

On the positive side, we should point out that tribal leaders have been successful in some of our TANF related dealings with the state of Montana:

- We convinced our State Legislature to redirect \$5.9 million of previous years' carry-over funds (our request was for \$14.1 million) for use by tribal welfare reform offices. Unfortunately, the State government subsequently rescinded and redirected 90% of that \$5.9 million.
- We achieved policy changes within the state government to address what had been inflexible and unrealistic sanction policies of the state. This change ended up benefiting both Indian and non-Indian recipients of assistance; and
- We have built a voice within the Community Operating Plans for counties in which our reservations are located.

Nonetheless, we are still faced with almost insurmountable issues in endeavoring to contract with the state to attain the limited amount of funding awarded by the state legislature. Such obstacles include demands of waivers of sovereign immunity by the state, requirements that we insure state employees who come onto the reservation, requirements to hold the state harmless for any responsibility or liability for their actions, a requirement that disputes cannot be resolved in tribal courts, requirements that the state must have such control of data that we would not be allowed to accompany them to the state legislature to provide tribal population numbers should those numbers contradict the state's.

I now want to offer some comments on the legislation introduced by Senator Baucus. These comments were adopted at a recent meeting of the Chippewa Cree Tribe, the Blackfeet Tribe, the Assiniboiné and Gros Ventre Tribes of the Ft. Belknap Reservation, the Northern Cheyenne Tribe and the Assiniboiné and Sioux Tribes of the Ft. Peck Reservation. These tribes met last week in Great Falls to go over the draft concepts of the Baucus bill and I have been asked to relay the following comments.

First and foremost, we strongly support the Baucus bill and hope that the Congress will enact it into law as soon as possible and fully fund the costs associated with its implementation. If the levels of funding and assistance proposed in S. 2484 had been included in PRWORA in 1996, there is little question that many more tribes would have chosen to operate Tribal TANF programs. As it stands today, only 37 plans representing 137 tribes have chosen Tribal TANF. Within the state of Montana, of the seven federally recognized Tribes, only two (Salish & Kootenai and Fort Belknap) operate Tribal TANF programs.

The five Montana tribes that met last week hope that any legislation enacted can include the application of "Rural/Frontier Status" designations for tribes operating TANF programs in the same manner as those designations are presently awarded to states with high unemployment, limited accessibility to services and that are geographically isolated. Those states get supplemental funds and tribes should be eligible for similar supplemental funding.

We are strongly in support of the components of the Tribal TANF Improvement Fund in the Baucus bill. These provisions recognize the fundamental weaknesses of the 1996 Welfare Reform Act in its treatment of Indian tribes and take positive steps to rectify those flaws. We greatly appreciate some of the changes that Senator Baucus has made to the previous draft which reflect comments we submitted to his office. The inclusion of the language indicating that tribes applying to operate a TANF program be given a priority and that tribes of all sizes receive funding and to maximize the number of tribes which receive funding are good provisions. We are also pleased to see recognition of the increased caseload for tribes that take over TANF programs and an acknowledgement that the 1994 figures compiled by states are not likely to be reflective of the true costs facing a tribe operating a TANF program. The \$140 million allocated for tribes that can demonstrate a higher caseload than originally estimated is a very positive provision. We are also pleased to see that the summary of the bill contains a reference to providing \$120 million for this provision. We want to continue to work with Senator Baucus and with the Indian Affairs Committee on the issue of Maintenance of Effort (MOE) support dollars. We had recommended that if a state does not contribute MOE funds, that tribes be allowed to access a pool of funds to make up for that loss. The Baucus bill proposes a \$120 million incentive program to states including 30 cents for each MOE dollar. It may be necessary to clarify what recourse is available to a tribe in those instances where states still do not offer MOE funds.

We support the inclusion of the tribal authority to issue tax-exempt private activity bonds and the tribal development grants but we feel these should primarily be available to tribes with high levels of unemployment. We are very supportive of the Job Access and Reverse Commute Grants, the Tribal Job Training program and the Tribal Child Care provisions.

Under the equitable access provision, we think Senator Baucus is on the right track relative to encouraging state-tribal cooperation and we think it is a good idea to involve HHS in this but we think there should be a provision to require tribal concurrence in the state-specific information on demographics and case load characteristics of Indians served by state TANF programs.

We strongly support the inclusion of the Tribal Foster Care Program as contained in S. 550. Tribes have been asking for the enactment of this type of legislation for many years and it is perfectly appropriate to include it in this legislation.

Finally, we want to thank Senator Baucus for including tribal colleges and governments and ensuring they have priority for accessing the research dollars in the bill.

In closing, it is the consensus of the Montana tribes to support and endorse the proposed “American Indian Welfare Reform Act of 2002.” Tribes must be afforded the opportunity to operate Tribal TANF and provide for our own people. This legislation provides incentive and opportunity to do this.

Montana Tribal Governments are committed to strengthening Tribal families, protecting the interest of tribal children and developing economically prosperous and culturally thriving tribal communities.

Thank you, once again.